IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 8375 OF 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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DIWANJIBHAI JAMSHIBHAI GAMIT - Petitioner(s)
Versus
STATE OF GUJARAT & ORS. - Respondent(s)

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Appearance :
Shri H.M. Jadeja for Petitioner(s).
Shri L. R. Pujari, Assistant Government Pleader for Respondent(s) : 1 - 2.
None for Respondent(s) : 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 10/04/2007

ORAL JUDGMENT

1. The petitioner, Diwanjibhai Jamsibhai Gamit, being

aggrieved by the order dated 16th/18th April, 1994 passed by the Deputy Secretary (Appeals), quashing the earlier order dated 20th February, 1982 passed by the Deputy Collector, Vyara is before this Court with a submission that the order shows absolute non-application of mind and even does not take into consideration that even if the order is allowed to stand, no useful purpose is going to be served.

2. The short facts necessary for disposal of the present petition are that in the consolidation scheme, Survey No.70/2 admeasuring 2 Acres 9 Gunthas and Survey No.69/2 admeasuring 1 Acre and 15 Gunthas were converted into Survey No.70/2. The respondent No.3, Somabhai Jamsibhai Gamit, made an application to the Deputy Collector under Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Tenancy Act" for the sake of convenience and brevity) for grant of permission to sell 2 Acres and 9 Gunthas of land. The said permission was accorded in favour of respondent No.3 on 30th December, 1978. Thereafter, on 10th January, 1979, the respondent No.3 sold 2 Acres and 9 Gunthas of land of Village Nani Chikhli by a registered sale deed in favour of the present petitioner.

2.1 After purchasing the land, the petitioner made an application to the Deputy Collector, Vyara for division of the block; the said permission was granted on 20th February, 1982. Almost after ten years of the said division, the Deputy Secretary (Appeals), Revenue Department, issued a notice dated 30th May, 1992, calling upon the petitioner and the vendor (respondent No.3) to show cause as to why the order dated 20th February, 1982 be not revised, recalled and set aside. The parties appeared before the Deputy Secretary (Appeals) and shown the cause, but, by the order impugned, the said Deputy Secretary (Appeals) set aside the order. Therefore, the petitioner is before this

Court.

3. After hearing the parties and on going through the records, I must hold that the order passed by the Deputy Secretary (Appeals) deserves to be set aside and quashed for the reasons more than one.

4. It is trite law that if the revisional powers are to be exercised by the revisional authority, then, such powers, if no limitation is prescribed, should be exercised within reasonable time. In a given case, the reasonable time may vary between six months to three years, but, by no stretch of imagination, the lapse of ten years would provide a ground or foundation to exercise the *suo motu* powers. In a given case, the authority may provide the reasons for exercising the powers after a long lapse of time, but, such reasons should be germane to the cause and must be logical and rational. In the present case, unfortunately, the Deputy Secretary (Appeals) did not give the reasons, which persuaded him to exercise the powers or issue notice after ten years and three months. On this ground of delay itself, the order can be quashed.

5. If the order dated 20th February, 1982 is set aside by the revisional authority, then too, the sale deed dated 10th January, 1979 would continue to be a valid sale deed. Not only that, the permission dated 30th December, 1978 granted under Section 43 of the Tenancy Act would still be a valid permission and if there is valid permission to transfer, then, the sale effected under the cover of such permission would continue to be valid. In the present case, if the block is not divided into two, the petitioner and respondent No.3 would become the joint owners of the property and defeating the provisions of all revenue acts, they can still have their own demarcation and may have separate possession. When an authority passes an order, it must pass an order

which may have its effect because the law does not permit any authority or Court to pass infructuous, useless and inexecutable orders.

6. Taking into consideration the totality of the circumstances, I am of the opinion that the order dated 16th/18th April, 1994 passed by the Deputy Secretary (Appeals) cannot be allowed to stand. It deserves to and is, accordingly, quashed.

7. The petition is allowed. Rule is made absolute. No costs.

[R.S.Garg, J.]

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